

:

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IN THE MATTER OF:

(IB)-1431(PB)/2019

Axis Bank Ltd.

.... Applicant/petitioner

v.

Payne Realtors Pvt. Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 25.07.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S.K MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Petitioner

Mr. Aditya Mahajan, Adv.

For the Respondent

Mr. Anandh Venkataramani, Adv.

ORDER

M.M.KUMAR, PRESIDENT

Axis Bank has filed the instant petition under Section 7 of the Code with a prayer for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor. The petition has been filed on the proforma prescribed by Adjudicating Authority Rules. In part 4 of Form-1 the details of financial debt along with the dates of



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disbursement have been given and the total amount due to the bank is Rs. 26,81,09,704.68/- as on 30.04.2019. The petition is supported by the statement of accounts maintained by the Axis Bank and various other security documents creating charge on the various properties. The letter of acknowledgement of debt dated 29.04.2019 has also been placed on record (Annexure-J1)

2. In reply to the notice to show cause the corporate debtor has filed its reply and in para 4 Mr. Vikas Sethi, who is Authorized by the Resolution of the Board of Directors, has stated as under:-

“That by this affidavit, the Corporate Debtor is admitting that it is in “default” within the meaning of Section 7 of the Code and that the Corporate Debtor does not have any substantive grounds to contest the non-payment of the debt. In light of such admission, the Corporate Debtor will therefore not be filing any substantive reply to the remainder of the petition.”

3. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.



4. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).

5. The aforesaid discussion and the material placed on record would lead us to confirm that the petitioner-financial creditor has disbursed money to the respondent-corporate debtor. Though a considerable long period has lapsed the amount due has not been repaid back to the financial creditor- petitioner. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh.

6. In view of the above nothing remains to be adjudicated as the default is admitted. Mr. Mahender Kumar Khandelwal having registration no. IBBI/IPA-001/IP-P00033/2016-17/10086 and address B-2A, Sunny Valley C.G.H.S., Dwarka, Sector-12, New Delhi, National Capital Territory of Delhi-110078 as named by the



financial creditor is appointed as IRP. He has filed his written communication on 09.05.2019 (Annexure- B) under Rule 9 of the Adjudicating Authority Rules, 2016.

7. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

8. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.



9. We direct the Financial Creditor to deposit a sum of Rs. 1 Lac with the Interim Resolution Professional namely Mr. Mahender Kumar Khandelwal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

10. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

11. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is

alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

12. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than three days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(S.K MOHAPATRA)
MEMBER (TECHNICAL)

25.07.2019
Ritu Sharma